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1 MS. WOODS: Should be Exhibit R-6.

2 CHAIRPERSON JIGANTI: I don't know if

3 there's any confusion with regard to Program Suppliers

4 Exhibit 20-R-X. It has been admitted into evidence as

5 Program Suppliers Exhibit 20-R-X. Is there any

6 problem with that? Okay.

7 Have we taken care of all the

8 housekeeping? We'll get to Dr. Axelrod.

9 Sorry to keep you waiting, Dr. Axelrod.

10 Mr. Garrett, call your next witness.

11 MR. GARRETT: Sports Claimants call Dr.

12 Joel N. Axelrod.

13 CHAIRPERSON JIGANTI: Dr. Axelrod, will

14 you stand and raise your right hand, please?

15 WHEREUPON, .

16 JOEL N. AXELROD

17 was called as a witness for the Joint Sports

18 Claimants, having first been duly sworn, assumed the

19 witness stand, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GARRETT:

22 Q Dr. Axelrod, for the record, will you

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1 woods, one of the attorneys representing the Public

2 Television Claimants in this proceeding. I just have

3 a few questions for you this morning.

4 Dr. Axelrod, is it correct that you, .

5 through your work with your firm, have experience

6 conducting constant sum surveys over the telephone?

7 A Yea.

8 Q Could you describe to us briefly what that

9 experience is?

10 A Yes. We have found that when working with

11 knowledgeable respondents, we have been 'able to ask

12 them to allocate points among two or more alternatives

13 at a time. When we work with consumers, we tend to

14 have them -- we tend to break everything up into pairs

15 and have them allocate points among the pairs so that

16 they only have to cope with a' little bit of

17 information at one time.

18 Q But if you have respondents that have some

19 knowledge about the area they are able to cope with

20 more than two alternatives at one time?

21 A Yee.

22 Q Would you agree with me that in the survey

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1 state your name and your current business address,

2 please?

3 A My name is Joel N. Axelrod. I am

4 President of BRX Global, Inc., a marketing research

5 firm located in Rochester, New York.

6 Dr. Axelrod, do you have before you a

7 document entitled "Rebuttal Testimony of Joel N.

8 Axelrod. dated 13 February 1996?

9 A I do.

10 Q That testimony was prepared by you, Dr.

11 Axelrod?

12 A Yes, it was.

13 Q Do you have any changes or corrections in

14 that testimony at this time?

15 A No, I do not.

16 MR. GARRETT: Your Honor, I would make Dr.

17 Axelrod available for cross examination at this time.

18 CHAIRPERSON JIGANTI: Thank you, Mr.

19 Garrett.

20 CROSS EXAMINATION

21 BY MS. WOODS:

22 Q Good morning, Dr. Axelrod. I'm Michelle

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1 administered by the Sorts Company, that the

2 respondents there could be considered to have adequate

3 knowledge to respond to more than two choices at one

4 time?

5 A Yes.

6 And Dr. Axelrod, is conducting constant

7 sum surveys over the telephone an accepted survey

8 research technique?

9 A It is widely done.

10 Q It is also accepted as a technique that

11 could lead to results, if the survey were properly

12 conducted, could lead to results with validity?

13 A Yes, it could lead to results with

14 validity.

15 Q And could you just explain to us in the

16 context of survey research what the term "validity"

17 means?

18 A Well, validity means does it predict,

19 technically, validity means does it predict what it

20 purports to predict? Does it predict purchase

21 behavior? Does it predict the share of the

22 requirements they would fill with a particular product

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or service, so it requires, first of all, that it be reliable, that is to say, be repeatable before it can be valid? If it's not reliable, then it can't be predicted.

ARBITRATOR WERTHEIM: Could you tell us roughly how many telephone surveys you've been connected with in say the last ten years?

THE WITNESS: Probably somewhere in the hundreds. It's hard to keep tabs on all the different variations, but I would say probably in the hundreds.

ARBITRATOR WERTHEIM: And that involved roughly what number of respondents?

THE WITNESS: It ranges from perhaps 100 up through thousands. It's highly variable. It depends on the subject matter, how many people are qualified, what the cost is.

ARBITRATOR WERTHEIM: What portion or number, you said hundreds of telephone surveys would, 'you say have involved the constant sum method?

THE WITNESS: Of the work we do, I would say probably the majority, of business to business surveys, certainly 'the great majority involve

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although I think that is also true.

ARBITRATOR WERTHEIM: Can you give us any testimony in the number of constant sum surveys over the last ten years?

.THE WITNESS: Very conjectural, but I would say probably in the hundreds.

ARBITRATOR WERTHEIM: Thank you, sir.

ARBITRATOR FARMAKIDES: Could I further clarify that for my own use? In other words, assuming you come up with a thousand surveys over your career, of those thousand surveys, are you saying that the majority are constant sum?

THE WITNESS: Certainly of the quantitative surveys we do. There are two kinds of work, qualitative surveys, focus group interviews, where there are no numbers, where one is simply exploring issues. And then there are quantitative surveys when you're trying to come up with a projection of what, an estimate of some sort of what people are likely to do, subsequently. Does that address the --

ARBITRATOR FARMAKIDES: Yes, it does. One

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telephone interviewing.

ARBITRATOR WERTHEIM: Can you describe what you mean "business to business"?

THE WITNESS: Business to business, any interview done not by somebody in their role as a consumer, but as a purchaser of a laser printer, or of a copier, or of a banking service. It's commercial research as opposed to consumer -- what Linda's going to buy when she goes to the supermarket to do the grocery shopping or what she's going to buy when she gets a new set of tires for her car or whatever, or she goes to buy a new car. All those things there, consumer work, and the balance is commercial.

ARBITRATOR WERTHEIM: You're saying that the majority of your telephone surveys have been in this business to business type, using the constant sum survey?

THE WITNESS: No wait, the majority of business surveys have, I believe, have used constant sum methodology.

It's not necessarily true that the majority of surveys have been business to business,

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more question, sir. In other words, then when you use a constant sum survey technique to reach a result, is there an alternative that you think of before you set on a constant sum technique?

What is the closest alternative that you would think of before you would settle on a constant sum or is there such a thing?

THE WITNESS: Well, there are situations, yes, where one would use a top of mind brand awareness. I mean, for example, if a person, you ask a persoU when I mention "soup" what brand comes to first -- what brand comes to mind first and they say "Campbell soup." And they might happen to be a user of Heinz soup. It is probable that their mental franchise has moved to Heinz and their feet will soon follow, but it has become salient in their mind and that turns out to be one of the other measures that we found. It is very useful in certain situations, testing advertising.

• ARBITRATOR FARMAKIDES: Would you consider that particular method would be useful in this situation that was tested by Bortz?

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THE WITNESS: I wouldn't think so because it's kind of loose as to -- I don't know how one would actually ask the question.

ARBITRATOR FARMAKIDES: Thank you very much.

ARBITRATOR WERTHEIM: Let me ask you another question. You're aware, I assume, that the Bortz survey asks the question of the cable system respondents about the relative value of various types of program categories in allocating a \$100 program budget.

The question also is posed in the context of the particular distant signals that were received by that cable system during that particular set of years.

Have you done or been a participant in any constant sum survey which poses the question in that context, that is, in a present tense for allocation of relative value, but nevertheless timed to experience in a particular past period of time?

THE WITNESS: Not precisely. We asked people what would you do now if you had the

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have this?

MR. GARRETT: I believe this is the Joint Sports Claimants 13-R-X.

MS. WOODS: All right, in that case I'll ask everyone to look at this copy as Sports Claimants Exhibit 13-R-X.

(Laughter.)

BY MS. WOODS:

Q I'll ask you, Dr. Axelrod, to turn to page 8 of Joint Sports Claimants Exhibit 13-R-X.

(Pause.)

For the record, I'd like to note, Mr. Chairman, at least on the version of Joint Sports Exhibit 13-R-X, I have distributed the markings were contained on the copy of the article that was turned into us in discovery by the Program Suppliers.

Dr. Axelrod, if you could take a moment to look at the first column on page 8, the section entitled "Preliminary Recommendations" and particularly, I'd like to draw your attention to the second paragraph and the final sentence of the second paragraph which states that the two measures that

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opportunity to purchase one of these copiers or one of these cameras or whatever, but I don't think we've ever done anything quite precisely the same.

ARBITRATOR WERTHEIM: You wouldn't ask him what copiers did you buy in 1990, 1992, Xerox, Canons, whatever, and then say how would you allocate your budget among those suppliers?

THE WITNESS: Oh, we will do that, although you have to be careful not to lead people down the garden path by suggesting that they should be consistent with what they did before.

We certainly, during the course of interviewing, we want to know what their experience had been with the various brands in question.

ARBITRATOR WERTHEIM: Thank you, sir.

BY MS. WOODS:

Q like now to distribute at this time what I'd ask everybody to mark as PTV Exhibit 7-R-X. It's my understanding, Exhibit 7, if anyone has an alternative understanding, I'd appreciate if they'd let me know.

ARBITRATOR WERTHEIM: Don't we already

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should be used in personal interviews can be obtained are the constant sum scale and the buying game?

A Yes.

Q Dr. Axelrod, do you need time to review this article?

A I'm sorry.

Q Do you need additional time to review this?

A It depends on what question you're asking.

Q Dr. Axelrod, are you aware that another party in this proceeding characterized this particular sentence as a statement that Joel Axelrod cautioned that constant sum scale is a measure that we should use only if personal interviews can be obtained?

A I understand that, yes.

Q And could you please tell us is that a correct characterization of your statement on page 8 of JSC Exhibit 13-R-X?

A No, that is not our current understanding. We have been continually working with a technique, trying new alternatives, exploring different ways of applying the question under different circumstances.

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People find it difficult to add very well and using, sometime using a combination of mail and telephone, rather than a personal interview and so no, our current position is we certainly -- what we do now is very frequently we will use telephone interviews with respondents rather than limiting our survey to only personal interviews.

CHAIRPERSON JIGANTI: Dr. Axelrod, what was the date of this article?

THE WITNESS: Well, several centuries ago.

CHAIRPERSON JIGANTI: My recollection was somewhere around 1976 or '78?

THE WITNESS: / believe it was 1968.

CHAIRPERSON JIGANTI: 60s.

THE WITNESS: Having done this as a mere child.

CHAIRPERSON JIGANTI: I'm not certain Ms. Woods was reading at that time.

MR. GARRETT: Is that really your picture on page 3?

THE WITNESS: All opinions to the contrary, that was indeed; some people said it was my

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ARBITRATOR WERTHEIM: Have you considered in writing that sentence such telephone surveys as you describe as business to business surveys?

THE WITNESS: I probably did, since I was then at Xerox, I probably had contemplated that, but had not systematically done any investigations thereof.

ARBITRATOR WERTHEIM: Thank you.

BY MS. WOODS:

Q And so Dr. Axelrod, am I correct that the conclusion stated in this particular sentence referred to consumer interviews in your experience with that?

A ' Yes, right.

Q And talking specifically about the survey done by the Bartz Company, Dr. Axelrod, would you agree with me that in the context of interviewing cable system operators or those people at the cable system most knowledgeable about programming at the cable system, that the use of a telephone survey would fall more into the business to business type of interview?

A Yes.

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bar mitzvah picture, but not quite true.

BY MS. WOODS:

Q And so it's correct that the understanding of the use of telephone interviews in conjunction with the constant sum technique has developed considerably since the time you wrote this article?

A Yes. It has evolved.

ARBITRATOR WERTHEIM: At the time it was written, did you mean to say that the constant sum scale should be used only in personal interviews?

THE WITNESS: As our experimentation up to that point in time, we did not have confidence in being able to do consumer surveys in particular, with multiple brands because the choices become -- the interview either becomes tediously long because every possible pair -- you know, if you have five pairs, you have 15 combinations and that makes for a long interview and the interviewees get bored and quit, etc. The interviewers do too. That was our understanding at that time. With consumers, we certainly could not effectively do constant sum surveys by phone.

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Q And that we then could expect that those particular respondents would be able to respond to a constant sum survey over the telephone?

A Yes.

• Dr. Axelrod, are you familiar with the term absolute scale or monadic scale?

A What was the word?

• Monadic?

A Monadic, I'm familiar with.

Q Is that a scale that would independently assess the value of each product or item being considered?

A Well, that's not a definitive or absolute scale. There can be all sorts of absolute scales, but yes, it appears -- assigning a single value along some continuum to each -- one alternative at a time, probably has influenced the rating that an individual gives to a particular brand or choice or alternative, is probably influenced not only by the particular item presented to that individual, but to the context in which it's presented, that is, if one asks for a comparison of, let's say, four hit movies and one

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which is a flop, if you presented the -- if you anchored the responses by presenting all four of the excellent movies, you'd probably get a lower rating for the flop, even though nominally each is being evaluated independently.

CHAIRPERSON JIGANTI: Is that a quality of the monadic scale?

THE WITNESS: Yes, responses to every question is influenced by the context in which they're asked. There's no such a thing as a context-free question because it's always embedded in a situation.

It's one of the problems with monadic scales. You don't know what the -- how the thoughts have been shaped by everything that's taken place previously.

CHAIRPERSON JIGANTI: How would you define the monadic scale?

THE WITNESS: Well, a monadic scale is a scale that you have defined -- it's an arbitrarily defined set of range of -- it's an arbitrarily assigned range of alternatives from which an individual can choose that which best represents his

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of biases that are possible with the use of a monadic scale and was what you were describing to us before where the results of the survey would be influenced by context in which it was presented, was that one of those biases?

A Yes.

Q And are there others?

A Well, I think there was an article by Dr. Benjamin Lipstein which identified 23 sources of errors in surveys, of which, one and only one are we able to hang a number one which is sampling error. All the rest are kind of -- researchers kind of shove them aside and say well, that's the influence of the art and we'll have to do the best we can. There are certainly many other biases.

O And specifically with regard to the use of a monadic scale what might be some of those potential sources of bias?

A Well, let's see, the range of options might not be, the range of options might run all the way from A to B. If you constrain the range that somebody can work within, and they describe A as good

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understanding, perception, feelings about a particular product, brand, whatever.

CHAIRPERSON JIGANTI: Thank you.

BY MS. WOODS:

Q And is it correct, Dr. Axelrod, that the Bortz survey used a constant sum technique which compares relative preferences of cable operators?

A Yes.

Q And would you agree with me that for purposes of determining the preferences of cable operators among different types of programming, it is preferable to assess their relative preferences through use of a constant sum survey rather than using a monadic scale survey?

A Yes, very strongly because there are all sorts of biases that are possible. People have different understanding of what a zero means, of what 100 means, whereas in a constant sum it is always locked into the fact that there are a hundred points and the more you give to one alternative is less available for the others.

Q Okay, you mentioned that there are kinds

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and they want to describe -- but they find B is better, there's no room, they have no room to maneuver. So they're locked in. It creates a great deal of difficulty with monadic scales.

Q That's all I have. Thank you.

CHAIRPERSON JIGANTI: Thank you, Ms. Woods.

ARBITRATOR FARWIDES: Dr. Axelrod, can I ask a question, please?

Have you heard about the criticism leveled at the Bortz survey with respect to the fact that it compares cable programming with signals. There are two signals.

What is your comment on that problem?

THE WITNESS: Program --

ARBITRATOR FARMAKIDES: In other words, we're talking about two signals being compared with the program. The two signals are the PBS signal and the Canadian signal being compared with programming like movies, series, sports, . devotional..

Have you heard of that criticism?

THE WITNESS: Yes, I. do recall.

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ARBITRATOR FARMAKIDES: What is your comment with respect to it?

THE WITNESS: Well, if it represents a realistic, what you're, trying to accomplish in a survey is represent as best we can the reality of the choice facing the cable operator. If that represents a realistic option to him, if he or she can cope with that being the alternatives among which he has to make his allocation and he doesn't feel, if he doesn't say you're comparing two things that aren't comparable, then certainly I have no objection.

We do many surveys when the things being compared not directly comparable. For example, what does a child have for his desert when he comes home from school? You might have one person saying well, it's either an apple or ice cream. Another says a candy bar. So in other words, a totally different, on one level they're totally, but they are realistic alternatives for that individual. And these apparently are realistic alternatives for the individuals here.

ARBITRATOR FARMAKIDES: Thank you.

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THE WITNESS: Well, okay. Nobody

expressed a concern, perhaps there was no concern.

CHAIRPERSON JIGANTI: Mr. Cosentino?

CROSS EXAMINATION

BY MR. COSENTINO.

Q Dr. Axelrod, my name is Victor Cosentino. I represent the Canadian Claimants.

I'd like to follow up on the discussion you just had. Now I think you said that as long as the survey question represents the reality of the choices the cable operator faces, then the question would be okay. I know I'm paraphrasing.

A Yes, that's right.

Q As Judge Wertheim pointed out, cable operators choose from distant signal packages. They pick a whole station to carry. They don't pick programming, individual program categories.

As you ask them to break apart all the signals that are carried and allocate it to different groups like sports and movies, different types of programming, if you asked them to do only that, which is something they don't normally do when they purchase

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ARBITRATOR WERTHEIM: Just following up on that a little bit, how realistic are these choices for the cable operator because his decisions -- should I carry PBS, should I carry a Canadian signal, but with respect to other signals, he's not called upon expressly to decide shall I carry sports, shall I carry movies, new movies or old movies, etc. His choices in that regard are limited to available channels, mostly from cable networks, each of which generally comprises a mix of those program categories. So in that sense, does this reflect the reality of the choices facing the cable operators?

THE WITNESS: I'm climbing out on thin ice here. I'm certainly not an expert on cable television and he may never have the choice to which you specifically refer. It may all come as a package, as I understand you correctly.

ARBITRATOR WERTHEIM: I think so.

THE WITNESS: Well, I don't know if anybody expressed a concern about that.

ARBITRATOR WERTHEIM. As far as I'm aware, no one did.

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programming, they don't normally break it apart?

A That's my understanding.

Q If you ask them to do that and taking aside the Canadian and the PBS station, just looking at them breaking those things apart, do you think you could construct a constant sum question to ask them just about programming categories?

A Oh yes, I'm sure we could.

• And could you construct a constant sum question that asks them only about entire signals?

A Entire signals? I would presume that we could. I haven't attempted to do so, but on the face of it, it would appear possible.

• Purchasing entire signals is what cable operators do, isn't it?

A As you say, that's my understanding. They don't have the option to break them apart into components.

Q Now in the case of the sorts question asked about both programming categories and distant signals, entire signals, normally if you were creating a survey instrument to look at that, would you have

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combined those categories?

A The answer is I don't know. There's a lot of context around this and trying to pick this out and say yes, if I were to do it again, if I had the wisdom of everything that's taken place, would that make sense? Possibly, but as I say, without thinking about what that means, how intelligible the question comes to the respondent, to the cable operator, does he say that doesn't make any sense, I can't do that. If he rejects the question, then obviously it's an inappropriate thing to do.

Q In your experience, doing constant sum phone surveys, is it typical for respondents to reject the question?

A I would say not. If we have done our homework, hopefully, we avoid ridiculous choices.

Q Well, let's assume that maybe you haven't done your homework.

A Okay.

Q How often do respondents say, ah, I just can't answer that question?

ARBITRATOR WERTHEIM. The witness can't

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they get numbers that add up to 100?

A That is what they're instructed to do.

O And that includes the zero that this person might answer?

A Yes, absolutely.

Q So it's possible for someone to not understand the question, but still answer it in a way that satisfies their constant sum methodology?

A It is possible.

Q Okay. I want to ask you questions on a different area. I think when you were talking about monadic scales, you talked about -- I think you gave an example of movies, several hit movies versus a flop.

A Flop, right.

Q I guess your point is well, your point with monadic scales, with that example of monadic scales is that some things can be thought more prominent than others in the choices. Is that --

A Certain things can be made to stand out by the context that you put them in. If you say you show a series of pictures of ugly people, let's say in the

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answer that question.

(Laughter.)

THE WITNESS: Thank you. Indeed. I can't say -- you know, people will say sometimes I'm not familiar with that brand or I'm not familiar with that product, I can't tell you whether, about this new copier, I haven't seen it yet. I haven't seen this new bank service that you are describing. People can certainly say -- I mean one of the ways they do that is by -- one of the ways they might do that is by giving it a square zero. I don't know anything about it so I'm not going to indicate any preference.

BY MR. COSENTINO.

• Okay, but by giving it a square zero, it does answer the question, doesn't it?

A Does it answer the question? It fills in a number. I don't know if it's responsive to the question fully.

Q Right, it might not be responsive to the question, but it fills in a number?

A Yes.

Q And the interviewer will not stop until

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context of someone who is not ugly, good looking, they will look more beautiful in one context than another. So certainly context is always an important consideration.

O And in constant sum type of question, is that context still important?

A Well, when you say 'in a constant sum situation' there are other questions other than the constant sum question used in the survey.

They rotate, as I recall, it does say that they rotate the -- rotated the alternatives, so certainly minimize the order bias, you know. I'm sure didn't totally eliminate it, but it certainly is minimized.

Q Right, order bias is not so much what I'm trying to get at. I guess what I'm asking is is it possible to ask a constant sum question where some of the categories overwhelm the items?

A I'd need an operational definition of what do you mean by 'overwhelm'. How would I know that I

O Okay, we could generate a constant sum

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question comparing any set of similar items, right?

2 We could compare breakfast cereals. We could compare

3 toasters.

4 A Right.

Q We could compare components of breakfast

cereals, the flakes versus the raisins?

7 A Right.

8 Q Is it possible in setting up one of those

9 that you can -- that some features, some of the

10 categories that they are, that the interviewee is

11 allowed to allocate value to, are so dominant that

12 they could overshadow some of the others?

13 A Well, the answer is -- when you say is it

14 possible, all things are possible. Some are more

15 probable than others. I don't know in this case if

16 'you're saying would this survey introduce any such

17 bias, clear and distinct bias, so that no matter what

18 we have done, the -- what Bortz had done, the answer

19 Would have come out -- it's inherent in the nature of

20 the question that the sports programming would come

21 out higher.

22 As I say, it's not clear to me how you

11149

Is it --

2 ARBITRATOR WERTHEIM: Are you talking

3 about scale analogy?

4 MR. COSENTINO: Yes. I guess so.

5 MR. GARRETT: Ask him about bathroom

6 scales then.

7 BY MR. COSENTINO:

8 Q Dr. Axelrod, constant sum questions and

9 surveys in general, as long as the results add up to

10 100 for each question you can then allocate them in

11 the average amount and get a result of 20 percent for

12 this, 10 percent for that?

13 A Yee.

14 Q Okay, is it possible and I'm asking

15 possible now, knowing that you said anything is

16 possible, but is it possible that a constant sum

17 question can be accrued in the way it probes very fine

18 4eas of interest?

19 A If you ask me could I distinguish between

20 let's say a 10 watt bulb and a 20 watt bulb, both in

21 the context of a 100 watt bulb, I would say the 100

22 watt bulb could overwhelm the 10 watt bulb and the 20

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demonstrate that that did or did not occur.

2 Q . Well, I'm not necessarily trying to single

3 out sports, but distant signals generally consist of

4 -- when you combine them and break them apart of their

5 component parts there's a lot of movies and a lot of

6 news and a lot of sports.

7 A Uh-huh.

8 Q Do those -- is it possible that those

9 categories can overwhelm a smaller category?

10 MR. GARRETT: I'm sorry, I keep having

11 trouble with the words .overwhelm. and "dominate" and

12 exactly what you mean by that. I think that's part of

13 the problem here with the witness as well.

14 CHAIRPERSON JIGANTI: Is that an

15 objection?

16 MR. GARRETT: It's in objection to the

17 form of the question.

18 CHAIRPERSON JIGANTI: The objection is

19 overruled. You may continue.

20 BY MR. COSENTINO:

21 Q If you don't understand the question, I'll

22 rephrase it.

11150

watt bulb. And I couldn't tell the difference among

2 them.

3 Whether that is a valid analogy for this

situation, as I say is a matter of conjecture.

6 Q Okay, when you say it's a matter of

7 conjecture, are you familiar with the amount of

Canadian programming, the number of Canadian signals

available in the entire distant *signal* market?

9 A No.

10 • Are you familiar with the amount they

11 actually carry in the distant signal market?

12 A Certainly not. I live in Rochester and we

13 may well receive Canadian signal.

14 .Q I think we've heard that there are roughly

15 7,000 or so instances of distant signals carried on

16 the cable systems, Form 3 cable systems. That's

17 certainly in the ball park. There are less than 100

18 instances of Canadian signals being carried on U.S.

19 3 systems.

20 A ' Uh-huh.

21 Q Is that -- and those systems are probed

22 with the Bortz question about the value, relative

value of signals.

A Uh-huh.

MR. GARRETT: A question for clarification. "Those systems"?

BY MR. COSENTINO:

Q Okay, a sample of the systems carrying that mix of signals, sample of the Form 3 systems is asked the Bortz question. In that context is the Canadian -- are the Canadians like the 10 watt bulb? Is it possible that they're overwhelmed by the 100 watt bulb of the remaining signal types?

A It may be possible. I don't know that they're overwhelmed or underwhelmed. I really can't say how they would react, how many options they're aware of, how many are considered. They may say well, gee, I've got all sorts of Canadian options. I could choose, did you say several hundred?

Q There are less than 100 signals carried. There are actually about 25 signals, I believe. There are 100 instances of -- or less of carriage.

A I don't know why they should or shouldn't be overwhelmed, as you phrased it, by their being 100

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problem of what do we mean by overwhelm and I don't know how to put a clear answer. / don't know what the evidence is for deciding whether that overwhelms. I don't know what overwhelm means.

Q Right.

A And once I don't know what overwhelm means I can't really provide you with a good answer.

Q Okay. I guess what I mean by overwhelm is is it possible that an instrument that's targeted to the type of programming that's carried on this 7,000 instances of carriage across 700 systems, across -- of 700 or so different types of signals, would be too crude to accurately measure something that's only 80 instances of carriage from 25 different choices?

A I'm sorry, would you say that again?

Q Sure. There are about 85 -- let's put it this way, the Bortz question asks about movies, series, sports, devotional, news and local, PBS, Canadian.

A Right.

Q The four categories, the categories of news, sports, movies, series and devotional, those

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different choices. That would strike me as being kind of the reverse of what we've been talking about. It seems to me you're saying with so many choices, that they should, that should have -- if there is a bias, it should be in the direction of pushing people to think more about Canadian signal.

Q I guess I don't understand. I guess I don't understand what you just said.

There are roughly 7,000 different times that distant signals are carried on the Form 3 systems. For example, WTB might be carried on every system and that make up 2,000 of those 7,000 times.

And there are something like 80 or so times that a Canadian signal is carried on those systems. And there are -- when they choose the 7,000, the total 7,000, they're choosing out of a mix of 750 or so possible signals that are carried distantly. And when they're choosing out of the Canadian group, they're choosing out of a smaller set of about 25. In that context, with that information in mind, can you rephrase or explain your answer again, please?

A Well, as I say, we keep running into the

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categories, appear on the 7000 instances of carriage, roughly 7,000 instances of carriage. The Canadian only appears on roughly 80 and this is across the whole universe of Form 3 systems, not -- the sample is obviously smaller, the Bortz sample.

Under those conditions, is it possible that the Bortz question might not pick out the detail of preferences for Canadian as well as it picks it out for the larger categories?

A Is it possible? Yes, it is possible. It might not be thinking -- we do not know what's going on in the mind of the operator. We know what he's saying, but we don't know what he is thinking and what he is including, excluding in his mental map of the universe. So it is possible. How likely it is, I don't know. I don't recall seeing any evidence one way or the other.

Q Okay.

ARBITRATOR WERTHEIM: Dr. Axelrod, another witness tried to describe the hypothesis that Mr. Cosentino is asking about, referred to the difficulties of weighing a t-shirt on a bathroom

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scale. I don't know if that analogy helps you in any way to respond to his question. I would assume that that analogy turns on the fact that the scale doesn't measure fine distinction, ounces for example.

The survey in question here, the Bortz survey, does specifically ask about Canadian signals among relatively few other categories. Does that make any difference in your response to this line of questions?

THE WITNESS. Well, that parallels what I said about trying to distinguish the context of the 10 watt bulb and the 20 watt bulb. It's essentially the same question. As I say, it still doesn't help with the problem of I'm not sure how you define overwhelm, you know, would it have been different if we had asked a different question. Possibly. Any time you change the question, you can influence the way people respond. So I can't talk about what we didn't do and what I don't have any data for.

ARBITRATOR WERTHEIM) Thank you.

BY MR. COSENTINO:

Q Dr, Axelrod, I'm going to move on --

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ARBITRATOR WERTHEIM: This is the next to the last page?

MR. LANE: I'm sorry, yes, Your Honor.

MR. GARRETT, It's the penultimate page.

MR. LANE: That's right, the penultimate page.

BY MR. LANE:

• Do you have that, sir?

A The penultimate page. Yes.

ARBITRATOR WERTHEIM: "Next to last. is one syllable shorter.

(Laughter.)

THE WITNESS: Okay, yes, yes.

BY MR. LANE:

Q Now at the top of that page in the first paragraph you quote an answer that Dr. Besen allegedly gave in the transcript. Is that correct?

A I believe so, yes.

Q And you cite page 6343 of the transcript, is that correct?

A 6343?

Q 6343, is that in the parentheses?

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CHAIRPERSON JIGANTI: Mr. Cosentino, before we do that, I think we'll take a 10 minute recess.

(Off the record.)

CHAIRPERSON JIGANTI: You may proceed, Mr. Cosentino.

MR. COSENTINO: Actually, Mr. Chairman, having used the break wisely I have no further questions.

(Laughter.)

CHAIRPERSON JIGANTI) That wasn't why we took the break. Thank you.

Ma. Hand? Ms. Austin? Mr. Lane?

MR. LANE: I didn't have any questions before this started.

CROSS EXAMINATION

BY MR. LANE:

Dr. Axelrod, my name is Dennis Lane and I represent the Program Suppliers in this case.

Could you turn to page 3 of your testimony, please?

(Pause.)

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A Yes sir.

Q And the quote I'm referring, to which I'm referring you is simply answers to questions?

A Uh-huh.

• And that you cite as transcript 6343? Is that correct?

A That is correct.

Q I'd like to show you page 6343 of the transcript which begins right down here, sir, and ask you to find those words quoted on that page.

(Pause.)

Do you see those words quoted on that page?

A I have not come upon it as of yet.

Q Have you had a chance to read the entire transcript of that page?

A No, I haven't read the entire transcript.

Q Not the entire transcript. On that page.

A Right, on that page, I haven't read the entire transcript, 6343.

Q Do you see where it ends, sir?

A Yes, right here.

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Q Fine.

(Pause.)

A The exact words, let's see. Simply as answers to questions.

Q It actually reads .Simply answers to questions..

A 'Simply answers to questions as in short telephone interviews which posed a hypothetical question."

Q Well, I'm just referring to the first quote that you have in the first paragraph on the third line of the third page of your testimony. We'll get to the other ones in a minute.

A Okay.

Q Did you see those words anywhere on page 6343, sir?

A I have not seen them, no, I'm not looking at them now.

Q I'd like to show you, sir, in the back of this particular transcript, since We all know what a wonderful job Charles does, they have a listing of every word that's in the transcript. I'll ask you to

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Q Now we're on the same page, right?

A Right.

Q Now, in the next sentence on the first paragraph which is the last sentence of the first paragraph on that page, you said that -- you indicate that Dr. Besen suggested that one should not expect to receive accurate answers in a short telephone interview which posed a hypothetical question.

Do you see that?

A Let's see what the exact wording was. "One could not expect to receive accurate answers" -- he suggests. I said he suggests that one could not expect to receive accurate information -- accurate answers in a short telephone survey which posed hypothetical questions. Right.

Q And do you know what the context of "hypothetical question" was in that case?

A No, well, I think I know.

O Can you tell us what you think you know?

A As to how one would allocate funds, the 100 percent of your resources given this theoretical set of circumstances.

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take that on faith.

I'd like you to just look and see if the word .simply. appears anywhere in that index.

(Pause.)

A I do not see the word, wait, wait, wait, "similarly", "simple" but not "simply."

Q So the word "simply" apparently never appeared in the transcript during --

A "Simplifying", "simplify." No, I don't see the word "simply" in this transcript.

• So the word "simply" did not appear in the transcript during which Dr. Besen testified, nor did it appear on the page which you've cited. Is that correct?

A That is correct.

• Now, you also indicate in the next line, do you have your testimony in front of you? I'll be happy to stand up here with you.

A Yes, I believe I do. Let's see. Here we go.

Q Okay?

A Uh-huh.

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O And I'd like to show you page 6376 which is the page you cited, is it not?

A For this, 6376, and 6381.

Okay, well I can only show you one at a time.

Here's page 6376 and I'd ask you to read that and any other pages you'd like around that and then I'm going to ask you some questions.

A My point is that it's hypothetical in the sense that it doesn't say anything. They couldn't give any answer to any question they like. It doesn't affect anything they -- I'm sorry, it doesn't affect anything about the way that the cable system performs.

ARBITRATOR WERTHEIM: You're reading now from Dr. Beaan's testimony at page 6376?

THE WITNESS: That is 6376, correct.

ARBITRATOR WERTHEIM: Thank you.

THE WITNESS: When they decide whether to pay additional copyright royalty that is a real decision. They put down real money when they do that. That is a much better considered decision than how much -- how to answer a question in a survey.

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BY MR. LANE:

Q Was that your understanding of what Dr. Besen meant by "hypothetical"?

A I believe so, yes, the hypothetical question was how, yes.

O And do you disagree that consumers -- what they say they do and what they actually do, are not always the same thing?

A Typically.

ARBITRATOR WERTHEIM: Do you think the same is true of business people in business to business surveys?

THE WITNESS: Our ability to predict based on what people say what they're going to do is fairly limited. Certainly, the constant sum gives us a better prediction than any other approach that we're familiar with, but by no means is there a one to one correspondence between what they say and what they do because circumstances may change dramatically between the time the question was asked and the time the behavior at some later point is elicited.

CHAIRPERSON JIGANTI: You used the

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people said they were going to do versus what they did. There's quite a -- there certainly is a discrepancy. It's better than anything else, except one other question we could ask which is what did you do last time? Since what they did last time is probably the best prediction of what people will do the next time.

CHAIRPERSON JIGANTI: Thank you, Doctor.

ARBITRATOR WERTHEIM: Excuse me, Doctor, I'm not clear how your response relates to my question which is whether there's any difference in this regard of this predictive value between business people as respondents in a business to business survey 'and consumers.

THE WITNESS: The answer is we don't know. There probably is just as much, perhaps -- well, yes, it is probable that there is more of a discrepancy between what they say and what they do than for an individual because in an organizational situation, it's not only your own opinion that may influence behavior of what you do, but there may be other people. The local politician who may vote to renew

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terminology, just before you answered that, is your ability to predict fairly limited? What do you mean by that?

THE WITNESS: I mean we cannot say because a. person said "I'm going to give 100 percent of my points to cornflakes", therefore that person is going to purchase cornflakes. He might have a coupon. He might have been visited by -- a cable owner might be visited by somebody who said look, I think perhaps they're planning to do a lot of good things and I think they're going to become a stronger station. There are all sorts of things that can happen that between the verbal response and the subsequent behavior.

CHAIRPERSON JIGANTI: You seem to quantify that.

THE WITNESS: Well, one of the very few studies, essentially there were two studies that have been documented. One we performed and one at Lever Brothers' and one that was performed by Russ Haley, and we certainly did not take into account the majority of the variance in behavior. That is, comparing what

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your franchise. There are all sorts of other people intervening whereas when you're talking about the consumer, there is less intervention.

ARBITRATOR WERTHEIM: Thank you.

ARBITRATOR FARMAKIDES: So what you're saying then is the chances of predicting in a business to business situation is less than the chance of predicting the consumer environment?

THE WITNESS: Probably. We don't have any data on that, but certainly people who are involved in this field would tend to say that our predictions are certainly a lot better than we could do if we just sit and guess, but are far from perfect.

ARBITRATOR FARMAKIDES: Dr. Axelrod, do you have any follow-up techniques or methods that you all use to improve your chances of predicting?

THE WITNESS: Are there techniques? Yes, it is possible to do it. In a practical sense, it is not done because the manufacturer, you do a survey for him and he decides well based on that he is going to do X, Y and Z. He doesn't want to test out the technique. Our clients are not interested in

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research. They're interested in making decisions and they pay a lot of money for that and those decisions can influence -- and if they sound uncertain about -- if they *feel* uncomfortable about what they're going to do, they don't want to send out the message that this may be pretty good, but maybe we should ignore it.

ARBITRATOR FARMAKIDES: But you said earlier that what a person has done in the past is probably going to predict the future, the action of that person. Is that correct?

THE WITNESS: That is true. That has been clearly demonstrated in prior research.

ARBITRATOR FARMAKIDES: Thank you.

ARBITRATOR WERTHEIM: Does your comparison between the business decision maker and the consumer really stand up when you look at it where consumers, for example, are influenced by a lot of things in their decision making, including family members, friends, maybe advertising, other factors, changes in the weather?

THE WITNESS: That's right. All those things can influence it. As I said, nobody has been

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that this was presented in these proceedings as the justification for the Bortz survey?

A Yes.

Now, I'd like to turn to the second page of the exhibit which is marked at the bottom as page 4. I guess it's from a journal, correct?

A Uh-huh.

Q In the box at the top you refer to the different, you were measuring 10 intermediate criterion, is that right?

A Right.

Q And they're all described here, is that right?

I think they're described. The question that you asked of each respondent is described?

A Yes.

Q And the No. 4 one at the bottom of the first column is the constant sum scale, do you see that?

A Yes.

Q When you ask this question, you say that you've listed several brands and were they brands of

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able to quantify and say if this person said they were going to buy an Apple Computer Iie, they're going to buy an Apple Computer IIe, because they may have been fired the next day.

As I say, there are innumerable opportunities to change from what they planned. They cut the price for example. That would be one of the major changes or a new boss got hired and he had a different viewpoint of what he liked. There are innumerable ways that can affect people's behavior.

ARBITRATOR WERTHEIM: Is it your view in the Bartz survey, the object was to explain past behavior or was it to predict future behavior?

THE WITNESS: Well, I would presume that the -- well, I shouldn't presume. I don't know. I don't know one is mutually exclusive of the other.

ARBITRATOR WERTHEIM: Thank you.

BY MR. LANE:

Q Dr. Axelrod, I'd like to show you your bar mitzvah picture again and I have some questions I'd like to ask you about what has been previously marked as JSC Exhibit 13-R-X and you're aware, are you not,

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all the same product?

A Yes.

Q What were the products that you were testing, do you recall?

A Surely.

MR. GARRETT: Excuse me, before you answer that question, are you done with the transcript?

MR. LANE: Am I?

MR. GARRETT: The transcript.

MR. LANE: Yea.

THE WITNESS: The categories were those that Lever Brothers were marketing at that time which included bar soap, toothpaste, shampoo, let's see and I don't remember quite offhand --

BY MR. LANE.

Q Relatively small personal type household items?

A Yes, detergents, things of that nature.

Now in the next sentence you say here are 11 cards. See that? It's in the third line of your No. 4.

A Ah, yes, right, okay.

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Q Why did you pick 11? Doesn't it seem like an odd number?

A It is an odd number. The reason we used an odd number was we wanted to force consumers to make discriminations, subtle discriminations. If we gave them an even number they might be inclined to arbitrarily divide things evenly and as I recall from the diagnostic point, for other purposes, we wanted to be able to say they feel a little better about this one than that one.

Q Okay, now were these different brands all of the same price or roughly the same price?

A I believe, roughly, yes.

Q Now if we just go outside of the box and at the same on page 4 in the right hand bottom corner we see table 2.

A Uh-huh.

Q Correct me if I'm wrong, this is just -- you first did a what do you call it, a pre-test? And that's what this describes. Is that right?

A Let's see.

ARBITRATOR WERTHEIM: I'm sorry, Mr. Lane.

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I understand the test is that for each respondent, you didn't ask them all 10 different questions, you only asked them one question and only asked them about one product?

A No, that is not correct. We asked each one about a different product category, so we didn't ask the same question -- we didn't ask a predispositioned to buy scale about laundry detergent and then about bar soap and then about etc. Rather, the driving force was how many product categories we had and how many questions we had and finding the way to use each question at least once.

Q Okay. So I guess I'm a little bit confused, but -- you had two groups in this, is that right? You had -- you divided the group into two at this stage?

A We had a test and a control group, that is correct.

The same individual might be the test group for one and the control group for the other.

Q And what does it mean by sample 1 and sample 2?

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I don't see Table 2 in that page. There's a figure 2.

THE WITNESS: It says Table 2.

MR. LANE: Table 2 in the bottom right hand -- it's the second page but in the bottom left hand corner it's marked as page 4.

ARBITRATOR WERTHEIM: Oh, I see. Thank you.

THE WITNESS: Was this a pilot test? I don't know if we'd characterize it that way at the time, but it had the objective of determining if these techniques, their relative sensitivity, so that we didn't spend a lot of time and money testing something which would essentially have given us the same answer as what did you buy last time.

BY MR. LANE:

• Let me put it this way, if you flip over two pages from that to page 6 and stay at page 4 because I'm going to have some questions, first you did a test of 200 respondents and then later you did one of 2,000. Is that correct?

A That is correct.

• Again, going back to Table 2, the way that

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A In the experimental design, it says that we -- let's see. It means that -- well, it was a controlled respondent in sample 1 and I believe 150 of those respondents were test respondents in sample 1. We flipped it over and did it the other way around.

Q Did you ask the same 200 people both times?

A We asked the same people, but not about the same product categories.

Q Okay. Could we turn over to page 6, please?

And this describes in the bottom, I'm sorry, in the left hand column towards the bottom where it says method of predictive power and stability phase. This describes the second portion of your research. Is that correct?

A I believe so.

Q And that involved 2,000 housewives, as you put it?

Uh-huh.

Q And again, this was brands of different product categories, is that right?

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A That's correct.

Q Now, could we look over in the right hand column and we see Table 3 there, do you see that?

A Right hand column.

We're still on page 6. Table 3.

A Oh, page 6. Yes. Table 2 and the right hand column Table 3, predictor index, correct.

Q And this, I think right above that you say this is conceptually how your analysis worked. These aren't real numbers in other words?

A I believe that is correct.

Q Now if we look at the constant sum technique is it fair to say that they're different prediction indices depending on whether respondents gave a high point or low points?

A Uh --

O Well, let me ask it this way. If we look at the first line, it says and I know these are all hypotheticals, you say that 200 respondents gave a 9 to 11 response, that meant that they took 9 to 11 cards and put them in the packet for this particular brand, right?

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predictor scale differs depending on whether the respondent gave a very high response, a moderate or a lower response. Is that essentially what you were trying to show?

A Yes, it predicts at the extreme, it predicts better than an intermediate score.

Q Okay, but at a low score it predicts that the purchase behavior would be very low. Is that right?

A Yes, somewhat more than somebody selected at random, but certainly not highly predictive of what they were going to do. It's not the estate that one wants to achieve in marketing activity.

Q You want to get them all in that 9 to 11 bunch?

A Yes, absolutely.

Q Now if we turn over to page 7 which is the next page and if we look at the top where you have all those, I guess. they're drafts in figure 3, predictive power and stability of 9 I.C.s, do you see that?

A Yes.

Q And one of the I.C.s is the constant sum

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A Right.

Q And then you found that 100 of them purchased, right?

A Right, within a specified time.

Q Correct, so that you said was a predictor index of 50 percent, in other words, about half the people who gave it a high rating, actually would go out and purchase it again. This is hypothetical. But then we go to the second set there and it says 700 give a 6 to 8 points. That would be, let's just call it a more moderate response than the first one. Is that fair?

A Yes.

O But out of those 700, only 50 purchase it, so instead of having a 50 percent purchase rate, we only have a 7 percent purchase rate. Do you see that?

A Yes.

Q And if we could add to the 100, who only gave 3 to 5 which would be say a lower rate, only 3 of those 100 purchased?

A Yes.

Q So that what I'm saying is that the

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technique?

A Correct.

Q And that is the one on the bottom right hand? Is that correct?

A Yes.

And again there from the slope of the curve we see -- well, why don't you tell us what that shows us?

A Let's see, conceptually it says somebody who gives a high proportion of their points to a particular brand and I don't recall whether this analysis was based on having sorted out brand switching versus repeat purchasing. But it says somebody who gives a high proportion of their points is likely to purchase that brand and the predictive ability diminishes as the number of points goes down. So the more points that an individual assigns to a brand, more likely it is they're going to buy that brand.

Q And then if we go to Table 4 immediately below that on the same page, do you see that?

A Yes.

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Q That's what's called the reliability index.

A Uh-huh.

Q Now the way that I understand this is what you did in this study, it didn't end with a constant sum, did it? You actually went out afterwards and asked them if they purchased the product?

A That is correct. Otherwise, you wouldn't know -- we wouldn't have validated the study.

Q Right. So what this table you're trying to do is say okay, well, I've done the constant sum and I'm going to predict what the purchases will be and then you're going to see if your prediction came true or not, is that fair to say?

A That's correct.

Q And what you've shown on the table here is your prediction under the predictive market column. Is that right?

A Yes.

Q " And that waa -- and these are the same numbers that we saw previously on the prior page in Table 3, is that right, in the left hand, the

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buy, but actually only 35 bought. And so forth down the line. Is that a fair way to read the table?

A Yes, I think this was collapsed across brands as I recall, so we made the maximum use of the data. We didn't just limit it to predicting -- let's say all for Lever Brothers.

Q So when you meant "collapsed among the brands" if someone said Tide and another person said Surf or someone said All, you counted those and gave them a 9, you would count each one of those. You didn't just look at the Tide answers?

A Right.

Q So this would be all the answers that gave 9s, how many of them would actually purchase this on your prediction?

A Yes.

Q Now, could you just turn over to page 8 of your testimony, please?

MR. GARRETT: Page 8 of the testimony?

BY MR. LANE:

Q I'm sorry, page 8 of Exhibit 13-R-X which is the very next page.

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predictor index?

A I believe so.

Q On the right hand column of that page, the middle of the right hand column?

A Yes, uh-huh.

Q Again, there's different predictors depending on how many points were given to the different brands. Is that right?

A I believe so.

Q And then -- now, is this Table 4, if you could go back to Table 4, please. Is this Table 4 a conceptual or was this, do you -- the notes say it's illustrative, and not actual figures, right?

A Uh-huh.

Q So if we look at the predicted market, conceptually, we're seeing that 75 of the 150 respondents actually made a purchase as they said they would, that's what you predicted in this case for this example and then you said, actually 80 of them bought, so you were a little bit -- conceptually that would have been a little bit low, correct? And then if we go down to the next line your prediction was 42 would

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A Yes.

Q At the very top left hand corner, do you see that? The very first sentence, "accurate predictions of purchase behaviors can be made from one half of the sample to the other half"?

A Yes.

Q That was why I was asking you to divide the sample into half?

A Yee, it's a split half approach. You set up a test and say put these people aside and then we'll see if they did what -- based on what they had said, we think they will do X, Y and Z and we look to see what they did do.

Q Okay, in this case the way that I understood it you predicted from one half what the other half would do. Is that fair to say?

A That is correct.

Q Now could we turn over to the next page which is page .9 of the exhibit, please?

A Yes.

Q Maybe you can tell us what exhibit, figure 4 says with the bar charts, just leave it for the

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constant sum-scale, please.

A What we were trying to predict, we wanted to be able to predict two things. We wanted to be able to predict not only repeat purchasing, but brand switching, so that if we know, if we knew that somebody used All and they gave it a high number of points, that that meant that they would be likely to continue to use All, etc. So we did that for all the different product categories. What this tells us indeed their behavior was consistent with what they said their switching behavior was consistent with what they said.

Q So in other words, if they gave it a high value they were unlikely to switch?

A That is correct.

Q Now, could you turn to page 10 of the Exhibit, please?

Do you see in the lefthand column that you did a long-term validation. Will you explain what you did, exactly?

A Yes. What we did was we interviewed people, some of them after 3 weeks and some of them

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are not quite as good as the Library of Congress, so I'm unable to answer.

But anyway, the 35 to 40 is the highest of the constant sum responses that you've shown on this particular graph.

A Right.

Q And again the behavior pattern dipped depending on what the response rate was, is that right? I mean not everybody purchased at the same level, depending on where they gave their response? Is that correct?

A Right.

Q All right. And if we turn over to page 11, which is the next page. And these are much more detail graphs combining the three week and the five week behavior. Is that accurate?

A Let's see. No, I think they're not aggregated. I think they're shown separately. I think they're shown on the same page.

Q That's all I meant; they were shown on the same page, right?

A Yes.

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' after 5 weeks. That's where we get long-term. And we examined what they -- well, we examined what they had in their cupboard and we asked them about what they had done in a certain period. The fact that they might have the product at that period didn't mean they didn't buy it, but consumed the entire product. So we found out what they had in their cupboard and we found out what they said they had purchased. And then we said here's what you thought you were going to purchase and here's what you did purchase and that was the basis for saying we not only predict what they're going to do tomorrow or the next day or the next week, but we predict at least a month out.

Q And part of that is shown in Figure 5 at the top of this page, is that correct?

A I believe so.

Q And again, now you have the constant sum scale here, you have the numbers 35 to 40 and then 30 to 34, etc. Do you switch from 11 points at this stage? "

A We didn't switch the scale that we used. I must admit I do not remember now, and my archives

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Q And the three weeks is the clear bars and the five weeks is the hatch bars on this page, is that right?

A Yes.

Q Now just so it's clear you have the word basis in about the middle of the page with a whole series of numbers across. Could you explain what that is for us, please?

A I think those are the people of course. And those represent the numbers of respondents with whom I think we completed a home visit to verify what they had done.

Q Okay. And again, when we look at the two scales -- just to go through them quickly -- there are different response rates depending on where on the constant sum the respondents fit, is that fair to say?

A That is fair to say.

Q Now, could you turn to page 12, please?

I understand this, what you are attempting to do here, is you have the behavior and you have the constant sum answers, and now you're trying to match that together, is that correct?

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A Exactly.

2 Q And you did it on a short-term and a long-

3 term basis, correct?

4 A Yes.

5 Q And the long-term here is five months as

6 compared to your prior five week long-term, is that

7 right?

8 A Yes. I became *daring*.

9 Q Did you actually go back again to see what

10 the respondents had done after five months?

11 A After five months?

12 Q Yes.

13 A I don't believe so. I think we ran out of

14 money or maybe I -- I was switching jobs. I had just

15 joined Xerox or something like that, but I don't

16 believe we did.

17 Q So how did you predict the long-term in

18 his case?

19 A Where the principal is the same. We look

20 at what they said at time one and what they did at

21 time two, and said is there a match.

22 Q Okay. And again when we look at

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sum for a particular brand might switch to another

2 brand?

A Oh, yes. As I said, because there are all

4 sorts of things -- For example, I go in to purchase

All and it's not there, so I say what am I going to

do? I've got three kids, 1,600 diapers, and I've got

7 to do something immediately.

a O Now in these cases it appears that the

9 people who actually gave the highest were also the

10 ones who switched on a percentage basis the most. Is

11 that how I read these tables?

12 A I believe so. If they did not use a brand

13 and gave it a lot of points, they were more likely to

14 switch to it than if they did not use it and gave very

15 few points.

16 Q Okay. And why would people that gave very

17 low points have very low switching behavior?

18 A Why would people who gave very low

19 points --

20 Well isn't that what this shows here in

21 fact?

22 A It says their probability -- Well there

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this -- and this is about switching behavior. Is that

2 right?

3 A Right.

4 Q So this would be the example of -- Well

tell me how that works. Let's say just to make it

6 simple we have All and Tide, and how would you predict

7 switching behavior. I think we all know what

a switching behavior is. But how would you go about

9 predicting it?

10 A Let's say in the simplest of answers, when

11 somebody says they're a nonuser of All, and we go out

12 to their house and we ask them what they have

13 purchased, and they have purchased All. Or we see it

14 in their cupboards, so we don't even have to ask them

15 if they did, we observe it.

16 And then we say well, before you gave

17 11 points to the Tide, but lo and behold you just went

18 out and bought some All. And the answer to which

19 might be, "Well, I would have bought All but I had

20 that coupon."

21 Q So in other words what these tables tell

22 us, that even people that have a very high constant

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1 are a lot of -- They gave very low points to let's say

2 All, and their probability of switching to All if

3 fairly low, but some of them will.

4 Q So these are measures then in the example

5 of someone who didn't use All but gave it a high score

6 when you initially went there. They might have Tide

7 in their household but they gave All a relatively high

score and then switched to All when you went back?

A Yes, Let's see, wait a minute. They did

10 not use All

11 Q But they had Tide.

12 A But when we went back they had purchased

13 All.

14 Q And also just on the constant sum part

15 they had given it a relatively high number of points

16 at the time, is that fair to say?

17 A Well the more points they gave it the more

18 likely they were to switch. So no, it's not that they

19 gave it a -- If they gave it a lot of points they were

20 more likely to switch than if they gave it very few

21 points.

22 ARBITRATOR WERTHRIM. You mean switch to

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that brand or away from that brand?

THE WITNESS: Well it predict -- Actually as I recalled it, it really turned out it predicted both ways. If they gave very few points to a brand that they used, that they're currently using, that says the mental franchise has already walked over to the next counter and their feet will follow. I'm saying that their behavior is consistent with their thinking.

ARBITRATOR WERTHEIM: I'd like to ask one more question concerning this line of question. You've indicated from the results of this study that results that show a high score for particular brand, have a higher predicted value than results for a low score, is that it?

THE WITNESS: Yes, that's correct for both repeat purchasing and brand switching.

ARBITRATOR WERTHEIM: Now in comparing the Bortz's survey, which shows, just to simplify, very high point scores for movies and series and for sports, but relatively low scores for other program categories. Does that mean that the relative value

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money. They've got to buy Tide or All, and they pick Tide or they pick All in our simple examples.

THE WITNESS: Yes, right. And I don't think that's quite --

MR. LANE: The Bortz's survey wasn't actually looking at them in effect being at the store purchasing program, right?

THE WITNESS: Well it wasn't saying you can buy one channel and that's it. It was talking about allocation of resources.

MR. LANE: In effect the Bortz study did do the follow-up, the kind of work that you've done? Is that fair to say?

THE WITNESS: I presume that that is the case.

MR. LANE: You haven't seen it in the study, if it's there?

THE WITNESS: I haven't seen -- right.

MR. LANE: I think I'm going to switch to a new topic.

(Whereupon, the proceedings went off the record at 11:37 a.m. and resumed at 11:51 a.m.)

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shown for movies, sports and series better predict the value than their relative values shown for other program categories?

THE WITNESS: I don't -- Not necessarily. Because here you're dealing with a situation. The situation we're talking about here is, am I'm going to purchase -- which of these eight brands am I'm going to purchase. It's an either or -- It becomes -- Now the situation is different in that the Bortz's situation I think is a share of requirements. It's not an either/or purchase. I'm going to go out and I'm going to get a box of detergent. I'm going to buy Tide or I'm going to buy whatever the brand might be.

The Bortz's situation, if I recall correctly, does not put people into an either/or set of circumstances. It's like, what kind of cereal are you going to buy next week. What's your share of your requirements you're going to give to each brand.

MR. LANE: So these tables are telling you what you actually did. When you say it was an either/or choice for these consumers you mean it was an either/or -- They're at the store; they've got

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MR. LANE: Mr. Axelrod, could you turn to the last two pages of Exhibit 13, which would be pages 16 and 17 -- Well, why don't I just start with 16, please.

As your counsel like to say, it's the penultimate page. Okay, and I'm looking at Figure 14. Do you see that?

THE WITNESS: Yes.

MR. LANE: And what do you mean by the diagnostic value?

THE WITNESS: Okay, what we are trying to do, we not only want to understand what people do, we want to understand why they do it. Because if all know is what they do I have relatively little control over the situation. My ultimate goal is to know what to say, and show, and to do with the product that will influence their behavior. So if everybody gets lumped Let's say we can only divide people into "likely to buy" and "not likely to buy". And here I have these two groups of people, and I'm trying to say what's going on inside their heads. So there are some questions that we ask that try to get at that.

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Now if I can only sort my people very crudely my ability to provide accurate diagnostics is very limited because I can only categorize people two ways; this person will buy; she will buy; he won't buy; etc. And I can't provide much -- I can't help to increase the probability of getting them to buy the brand next time.

BY MR. LANE:

Q And so here you're trying to determine the relationship, as I understand it, of people that you predicted would switch, but didn't switch in the short-term of whether they would switch in the long-term? Is that a fair reason?

A The diagnostic value predicted to be switchers but not found to be third term switchers. We're trying to understand why didn't they do what we thought they would do. There may be many reasons. They may have fully intended to do what they said they would do, but as I say, they may have had a coupon. They may have been going shopping with their children and their child reached down and grabbed another product. I mean there are all sorts of things that

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same sort of thing, except about repeat purchasers, is that correct?

THE WITNESS: Diagnostic value.

"Consumers predicted to be repeat purchasers but not found to be short-term repeat purchasers."

BY MR. LANE:

So it's the same idea that we just talked about with switching, correct?

A Yes.

Q In this case you were looking at whether they -- Now, does a repeat purchaser mean before you came for the first interview they had already purchased the product' and then you're just seeing if they're going to do it again?

A Let's see. A repeat purchaser means, at the time of the first interview they had made a purchase, and we said -- If I recall correctly we said, this person will purchase it again. Not only do they have it, but they're going to go out and get another box of it.

Q. And I think you said that repeat purchasing was -- I'm sorry if I recollect this

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influence why. In fact a lot of advertisers will purposely try to set up situations to get the child to influence the adult behavior as I'm sure you know.

Q It still happens and they're not children anymore.

And again, if we look at the right-hand side which is the bar, we see that the bar graphs are sort of wavy. Is that right? In other words, the highest constant sum doesn't necessarily predict the most -- it's not a straight line.

A Right. We didn't get elegantly neat results. I mean these actually -- In the scheme of things of doing market research these came out very well. So we were very pleased.

Q And now could we turn to the last page, please?

A The ultimate.

Q Yes, the ultimate page?

Is that right, Bob, or is this the post-penultimate?

MR. GARRETT: It's the post-penultimate.

MR. LANE: Okay. And up here you have the

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incorrectly, but the best predictor of future purchases?

A Yea. It is as a market research tool totally useless because you can't retroactively influence what they did do.

Q Right.

A But it is the best predictor.

Q And when we look at the constant sum scale on this side we see that the bars actually go up and then come -- It's sort of like a hill, is it not?

A That is indeed the case.

Q So that there are different levels of repeat purchasing at different places on the constant sum scale, is that correct?

A Yes, that is certainly true. And it may well relate -- I mean there are further analyses. This is not the ultimate or penultimate or any other. There's a lot more that could be done with such information in that heavy users make different patterns from light users, and so forth and so on. So this is not-the end all.

There was another article some place I

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wrote, talking about the other things that need to be done subsequently.

Q And I'd like to introduce as Program Supplier Exhibit 21-R-X which may be -- Entitled "Minnie, Minnie Tickled the Parsons." Is that what you were referring to?

(Whereupon, the above-referred to document was marked as Program Suppliers Exhibit No. 21-R-X for evidence.)

A Indeed. Well, this was certainly one of them.

Q And just so you know I asked my people to look for all the articles I could find that you had black hair.

A Yes, I was a toe-head up until fairly recently. Incidentally, for those who are not of biblical bent that means you have been counted and found wanting..

Q ' You have been weighed and found wanting.

A Right.

Q And that you're referring to Daniel,

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Everybody -- access or proprietary, and so we don't get any cross validation.

Q And in this article, when you were referring to the work used as the point of departure you were referring to your earlier article which we've been discussing, 13-R-X, is that correct?

A That is correct.

Q And just at the bottom of the first page of 21-R-X, you say that the conceptual model used in various validation studies has been flawed typically for expediency, so that even if the report or results are true they do not solve the problem. Do you see that?

A Yee, okay.

Q What did you mean by that?

A Okay. Researchers have ways to -- A typical situation for a "validation" is to try and prove that your service for, let's say testing commercials, is better than some other service for testing commercials. The people reporting the data are not disinterested scientists; they're trying to earn a living.

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Chapter 5, Verse 27.

A Okay.

Q Now just tell us in general what you were talking about in this article, please.

A Let's see. Robert Schnee wrote an article which I summarized by saying, the issue is when -- summarized the issue when he wrote, "What is lacking is a coherent body of general acceptable work methodology, The work used as a point of departure for this article has not been replicated, repudiated or extended in the publish literature." And the point was we were spending huge amounts of money doing the research, and we act as though it answered every question. And the fact is, this merely suggested some of the questions that need to be answered, and indeed verified again. I mean reliability -- If somebody came out and found the same answer twice as did my colleague from the University of New Hampshire. He essentially found the same thing, so that was a cross validation of the study. But unfortunately that is almost -- I'm not sure it's never done. It's virtually never reported in the literature.

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So what I was referring to here, people -- There are many situations where they get into these very distorted analyses to try and demonstrate that their method has validity, rather than approaching it from a disinterested point of view.

ARBITRATOR WERTHEIM, We haven't seen any of that in this proceeding?

ARBITRATOR FARMAKIDES; Another question would be, how would you best find this out?

THE WITNESS, It's a problem with the industry. In truth they don't want to know, but there are ways to do it and do it objectively. And as I said, we had no vested interest in any measurements whatsoever, but we were looking to see if we could find an approach that would help in this case Lever Brothers improve their profitability.

MR. LANE. Could you turn to the second page of your article, please? And in the middle paragraph at the bottom you said what the original research identified. Do you see that?

THE WITNESS, Middle paragraph?

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MR. LANE; Middle column.

THE WITNESS: Middle column?

MR. LANE: You see, one of the title is "What the Original Research Identified?" Do you see that?

THE WITNESS: Yes, right. Okay, here we are.

BY MR. LANE:

Q And again that refers to the article that's known here as Exhibit 13-R-X, is that correct?

A Yes.

Your earlier 1968 article.

A Yes, correct.

Q And you refer to that as an attitude and use study. Do you see that? It's about the sixth line down.

A Right, yes.

Q And what do you mean by an attitude in use study?

A Well, an attitude in use study is one that where we measure people's opinions, their attitude, which is their positive or negative feelings about the.

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O And what did you mean by that?

A Well, just because one knows that the use of a particular question leaves to responses which correlate with subsequent behavior in one category does not necessarily mean that it is predicted for every category. I'm saying we've only validated it -- a scientific validation -- across a fairly limited number of categories. It is probably the best of the available methods, and we do not know of anything that is any better, and we certainly know many approaches that are much worse.

O And then in the next bullet immediately below that, you say it did not establish the validity or lack of validity of the constant sum scale and brand salience for use in a system design to measure advertising, effectiveness, concept effectiveness or product effectiveness? What did you mean by that?

A Well a measure is in an advertising testing system. It's not only the question, but it is the contexts in which it's embedded. And it is least theoretically possible that the measure in isolation could be predictive, but taken out of context -- Maybe

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brand; and use of course refers to the fact to -- they behave.

Q So the first part where you had the constant sum question of putting the 11 points was the attitude part?

A Yes.

Q And the use part was when you measured their behavior, is that fair to say?

A Correct.

O Could we just go over to the right-hand column, parallel to that. And it says, "What the research didn't establish." Do you see that?

A Yes.

Q And again this is your article that we've marked as 13-R-X when you're saying what the research is, correct?

A Correct.

Q And you say it did not establish the validity of constant sum scale and/or brand sale for different product category such as durable financial services, white goods, etc.

A Right.

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1 you've asked the question twice for example, and
2 asking me the same, question twice might lead to some
3 biases. So you can't say necessarily because the
4 measure is good in isolation it is therefore good in
5 context.

Q And then you talk about a apocryphal story
6 of the gambler at the crooked gambling house and ask
7 why he played because it's the only wheel in town. Is
8 that sort of how you think about the use of some of
9 these techniques?

A Yes. As a matter of fact in one case as
11 it relates to commercial testing, management at Lever
12 Brothers at one point decided to use a particular
13 technique, and this was dealt with more than just this
14 measure. They used a particular technique because
15 they had to have a decision-maker, and management
16 would spend more time arguing about which was the best
17 commercial. It would have diverted them from their
18 main task which was to make a profit.

ARBITRATOR WERTHEIM. Dr. Axelrod, that
20 analogy to the gambler, do you think it has any
21 relevance at all to the situation of the advertising
22

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industry and Nielsen data?

THE WITNESS:. Yes. I mean, this is not my -- This particular area of Nielsen measurements is not my forte, but I do think, there's some real questions about what we are measuring, what is being measured, what is being observed, and what does it all mean. So yes, I have some real questions about the -- It's a crooked wheel but it's the only wheel in town. Right. If we knew how to do better -- If there are millions and millions of dollars invested in advertising research in terms of viewing, there are billions of dollars invested. Major financial decisions are being made based on the constant sum data because we believe it increases the probability of our making a profitable decision, and management would not be doing this if they didn't agree with that viewpoint. And of course there is some who don't. There is some who stick their finger in the wind and make a decision. They typically are not around too long.

MR. LANE: Staying on that page, at the top of the middle column, and you're quoting McQueen.

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is that something with which you agree? Does not often.

A I'm sure that's true some of the time. As I say, I am not sitting at the center of the -- the hub of the wheel, so. I really don't know. Maybe he's seeing a lot more data than I'm seeing.

Q And then the third one is social pressures and the test situations differ from those in the real buying situation. What do you think he meant by that?

A You're out pushing your shopping cart down the aisle, and junior screams out, "Hey, mother, I need a box of Cracker Jacks, or whatever, and the mother's saying, "My god, they're all yelling in here and I've got to do something." So she grabs a box of that Cracker Jacks to buy silence.

Q And would that also be true in business situations?

A Well, I hope we don't have too many screaming tantrums.

• You haven't met my clients I take it.

A Yes. There are certainly business situations that enter to it; to say your attitude may

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He says, "There are a number of barriers to using attitudes to predict consumer behavior." And among them he notes that attitudes are only one of several possible causes of consumer behavior and typically only correlate about, 30 percent with behavior. And is that consistent with your knowledge?

THE WITNESS: Generally speaking, yes, I would say that is the case. As I mentioned there are things like running out of stock coupons. In an industrial setting you want to buy this copier but you buy that copier because you get a special deal. Remember a lot of decisions are negotiated, so it's not a matter of yes, I'm going to buy, therefore I will, rather it's a matter of negotiation. The attitude may have been a very accurate predictor of what the behavior would have been if all other things had been equal. That little catch phrase is very important. Things are typically not equal.

BY MR. LANE:

Q And then the second one that he lists is attitude measurement does not often take past attitudes and behavior sufficiently into account. And

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be one thing, but your behavior for other reasons is shaped somewhat by what has happened, all other things being equal conditions.

Q Now the last one he says, "Brands grow by increase number of users and by increased amount of usage. Attitude measures typically reflect the former, but not the latter." And what did he mean by that?

A The former was the --

Q Increase number of users.

A Well, I'm not --

Q "Brands grow by both increase number of users and by increase amount of users. Attitude measures typically reflect the former, but not the latter."

A I don't know that I necessarily agree with that because if you're doing a survey it depends upon how you're screening your sample. If he's saying you're only speaking to people who already purchased your brand presumably you would miss the new user. So I'm not sure on what the line of reasoning is for that.

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Q Okay. And you said that these problems are real problems, in the next sentence. Is that correct? It's right in the middle of the page.

A All right. Yea, those are certainly real genuine problems that we face day to day.

Q Then the next part is validation of commercial testing systems, and I take it here -- I don't want to go through all the paragraphs, but essentially what you're saying is, that if you're going to do a survey like this you ought to attempt to validate it as you did in your 1968 research, and you better do it the right way.

A Yes, it certainly would be desirable. But not necessarily a winning strategy inside an organization. I mean quite literally by boss at Lever Brothers was fired because the research results showed that none of the system's for commercial testing predicted better than chance. They wanted him to use this system. He objected and they fired him.

Q You mentioned that at the top of the next page. Is that correct? It would be page 92 even though it doesn't have a page number at the bottom.

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Q So that validated your research?

A Yes, that's a form of validation. Admittedly not the most powerful, but nonetheless a form of validation:

ARBITRATOR WERTHEIM: These observations are made I take it in the context of using this type of study for the purpose of predicting future behavior. Is that correct?]

THE WITNESS: That is the case.

ARBITRATOR WERTHEIM: Would the same qualifications necessarily be true if it's being used for a different purpose?

THE WITNESS. The same qualification. When you say the same qualifications, for what --

ARBITRATOR WERTHEIM: Well concerning the need for validation, and without that the results are no better than chance alone.

THE WITNESS: Well, no. I didn't say, and I hope I didn't imply, that what we're doing is no better than chance alone. There's a significant probability that we are doing far better than chance using the constant sum scale. I cannot speak to many

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You say, "Our regrettable finding was that no system was able to do better predicting marketplace success than chance alone."

A Yes. And to the best of my knowledge that situation still is true today.

Q And when you talk -- just staying on that same page. At the bottom of the left-hand column you state that, "Conceptually the approach would be the same if we were talking about concept testing or product testing. One markets the product identified as optimum, and another identified as less than optimum. The validation comes from comparison of the predicted market share with actual market share."

A Yes.

And that you believe is how you validate, is that correct?

A That is how you should validate. In few select instances we had the good fortune to have a client ignore us when we said if they raise the price the bottom was going to drop out of the market. They changed the price and the bottom dropped out of the market.

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of the other measures that are frequently used, but we have evidence that the constant sum -- We have both clinical/technical evidence, both scientific, if you will, and clinical evidence that the constant sum scale is predictive. It is reasonable to assume that it is better than flipping coins in many other situations, including that referred to in the Bortz test data. So we're not saying that you might as well flip coins. If I conveyed that impression that's an error on my part. We certainly think that we do better than chance, significantly better.

MR. LANE: I just want to go back to this sentence again. The sentence was, "The validation comes from the comparison of predicted market share with actual market share." And in that case the predicted market share from your 1968 study was looking at the constant sum, then making a judgment on what the prediction index was, then applying that and predicting from that to the number of answers in a particular point level, and then using that all as the prediction scale. Is that right?

MR. GARRETT: I'm sorry. Where are we in

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1 this article?

2 MR. LANE: In this article?

3 MR. GARRETT: Yes.

4 MR. LANE: You mean 21?

5 MR. GARRETT: Yea.

6 MR. LANE: We're in the same place we were
7 before, Bob. What would be page 92. It's in the
left-hand column, and it's right at the bottom of the
page.

10 MR. GARRETT: Okay.

11 MR. LANE: Do you see it?

12 MR. GARRETT: "Conceptually"?

13 MR. LANE: Yes, it's the last sentence in
14 that paragraph.

15 MR. GARRETT: Okay. Thank you.

16 MR. LANE: So the validation cornea from
17 the predicted market share, which in your article the
18 predicted market share was as you outlined in -- and
19 I'm going to show you page 7, Table 4 from your 1968
20 article. And that's what you mean here by the
21 predicted share?

22 THE WITNESS: Yes.

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22-R-X for evidence.)

2 ARBITRATOR WERTHEIM: And this is written
3 in 1992?

4 THE WITNESS: Written in '92 also, right.
5 One reaches the stage where you can be -- One is
6 forgiven for being a curmudgeon.

7 MR. LANE: And just to go back, the
8 "Minnie, Minnie Tickled the Parsons", which was
9 21-R-X, was written in 1986, is that correct? Or
10 published in 1986?

11 THE WITNESS: Yes, I believe so.

12 MR. LANE: What does this article attempt
13 to do?

14 THE WITNESS: To both inform and entertain
15 concurrently; inform about the state-of-the-art. As
16 Art Kover, who was the editor for this issue noted,
17 "to get people to pay attention to things that they
18 prefer to ignore."

19 MR. LANE: And on the second page of the
20 exhibit, which I believe would be page 80 if it had a
21 page number on it. You have a section called
22 "Validation", do you see that?

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1 CHAIRPERSON JIGANTI: What were you
2 referring to in the '68 article?

3 MR. LANE: Page 7, Table 4; 13-R-X.

4 When you say the actual market share that
5 was in effect all your long-term and short-term, going
6 back and seeing whether they actually had the Tide or
7 the All in their household? Is that correct?

THE WITNESS: That is correct.

9 CHAIRPERSON JIGANTI: Would that be
10 another way of saying conduct, actual market share?

11 THE WITNESS: Yes, conduct, yes.

12 MR. LANE: At this time, Mr. Chairman,
13 even though it doesn't have a picture, I'd like to
14 have marked as Program Suppliers Exhibit 22-R-X, an
15 article, entitled "Observation, Politics and Poker:
16 Deception and Self Deception in Marketing Research".
17 And this is another article written by you, is it not
18 sir?

19 THE WITNESS: That is correct.

20 (Whereupon, the above-referred

21 to document was, marked as

22 Program Suppliers Exhibit No.

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1 , THE WITNESS: Yes.

2 MR. LANE: And I believe at the top of the
3 second column is a sentence that you wrote that's been
4 highlighted by the editor. "Some of the more
5 interesting forms of self deception and client
6 deception involve predicted validity." Do you see
7 that?

THE WITNESS: Yes.

9 MR. LANE: And what did you mean by that
10 sentence?

11 THE WITNESS: Well, I think people will
12 sometimes draw relationships that interpret the
13 research in such a way as to suggest -- The research
14 proves, I guess is the phrase that people like to use.
15 The research proves when the research may not
16 necessarily prove what they say it does. They
17 sometimes do things that are self serving, as indeed
18 I'm sure we all do. So I'm saying the people will
19 take a study that per se may be a perfectly
20 respectable study, and misinterpret it to demonstrate
21 a particular point.

22 ARBITRATOR WERTHEIM: Isn't that a common

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phenomena in our society where you're talking about the legal reform or political programs, or anything?

THE WITNESS: I would suspect it's true in all societies?

MR. LANE: Thank you. Those are all the questions I have.

CHAIRPERSON JIGANTI: Thank you, Mr. Lane.

Ms. Austin?

MS. AUSTIN: No questions.

CHAIRPERSON JIGANTI: Ms. Hand?

MS. HAND: No questions, Your Honor.

CHAIRPERSON JIGANTI: Okay that covers everybody except Mr. Garrett.

MR. GARRETT: I have a few questions, Your Honor.

You were asked some questions about Dr. Besen's testimony, do you recall?

THE WITNESS: Yes.

MR. GARRETT: And in your rebuttal testimony you refer to some criticisms that Dr. Besen had made of the Bortz study, correct?

THE WITNESS: Yes.

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ARBITRATOR WERTHEIM: Do you have some line references, Mr. Garrett?

MR. GARRETT: Yea, Your Honor, we're reading from page 6343, lines 14 through 21.

Now, Judge Farmakides asks another question about the difference between the two studies, and Dr. Besen goes on, on page 6345.

And let me just ask you to read, beginning here on line 5.

THE WITNESS: Okay. "The gross difference between them is this relies on being -- on behavior and that simply is answers to a question."

MR. GARRETT: All right. And so it is correct that Dr. Besen criticizes the Bortz study here as simply answers to questions, correct?

THE WITNESS: yes.

BY MR. GARRETT:

Q And you find that on pages 6345 to 6346, even though the word simply doesn't appear to be listed in the index here.

A Right,

Q I guess we should be assessing the

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MR. GARRETT: And you referred in particular here to page 6343, in which Dr. Besen is responding to a question of Judge Farmakides, about the difference between a Bortz study and the kind of econometric analysis that Dr. Semen had. Do you recall that?

THE WITNESS: Yes.

MR. GARRETT: Can I just ask you to read into the record a portion of the transcript that you actually refer to in your testimony?:

THE WITNESS: Let's see. We're starting here.

MR. GARRETT: Beginning with the witness.

THE WITNESS: "Well I think as I have indicated very briefly in here the shortcoming seems to be the major shortcoming of the Bortz analysis, is that it basically asks people their opinions of what was asked to tell you in a response to essentially a hypothetical question what their relative values are."

MR. GARRETT: Okay. And Dr. Besen goes on to talk about the advantages of this stuff, correct?

THE WITNESS: Yes.

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liability of the index, take that into account.

It is fair to say, is it not, that Dr. Besen criticized the Bortz study as simply answers to questions?

A Yes.

Q And you in fact state that in your rebuttal testimony, do you not?

A Yes.

Q Now you also said in response to some other questions from the panel that the answers respondents give to questions may be very different than their actual behavior; what they say and what they do can be very different. Do you recall that?

A Yes.

Q If that's the case why do surveys?

A First of all what they say they're going to do and what they do may be quite closely related at that point in time; what they say they're going to do and what they would do, if they could act on that attitude at that one point in time it might turn out to be identical. It's not that they're deceiving us or deceiving anyone else. And indeed often people do

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do what they say they're going to do. The value of a survey to our clients is that it says, hey, our advertising is working; they like our product. We should invest millions of dollars in this. And if we ask the questions in the right way we get answers that predict what they're going to do, and hopefully make a profit for the client.

Q I want to continue on this line, but let me just circle back to some of the questions that were asked initially by the panel dealing with your experience.

Over your career, Dr. Axelrod, how many surveys have you been involved in approximately?

A Probably thousands.

Q All right. And who commissioned these surveys that you've been involved in

A Typically Fortune 500, Fortune 1000 companies; manufacturers, financial services, insurance companies, banks, manufacturers, deliverers of services, restaurants, hotels, fast food outlets. Virtually every segment of American industry.

Q Would you identify some of the clients

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research at xerox, so I had massive number of surveys going on then. I would certainly in the high hundreds, maybe in the low thousands.

BY MR. GARRETT:

Q And during that period how many constant sum survey have you been involved in?

A Well certainly hundreds Of course some of those surveys were qualitative so there were no scales involved. But I would say, where possible I used the constant sum scale because I had confidence in that it provided us with sensitive, reliable and predictive answers.

Q And those surveys, the constant sum surveys that you've done, were done over the telephone, correct?

A Yes, the business surveys typically, because your respondents for a business survey are scattered all over. I mean I might be calling people in China English speaking people in China -- to do a survey.' And I can't do it by mail because the mail will take forever. I can't do it by telephone. I can't afford to send an interviewer in. Even a place

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that have asked you or your company to do surveys?

A Well, okay. Kodak, Bausch & Lomb, Goodyear, Wendy's, Chase Bank, Citibank, Prudential. I think over the years there are probably -- I'm not saying we've done work for every one of them, but certainly we've done work for the great majority of large companies.

CHAIRPERSON JIGANTI: Lever Brothers?

THE WITNESS. Strangely enough, no. It was one of those things that I was now out and other people were in, and we did not do work for Lever Brothers. We've done work for other manufacturers. Colgate for example. We've done some work for P&G, but we have not done work for Lever Brothers.

MR. GARRETT: How many business surveys have you done? Your career has spanned approximately 30, 40 years?

THE WITNESS: Yes, since 1958.

MR. GARRETT: And during that period how many business to business surveys have you done, or been involved with?

THE WITNESS: Of course I was director of

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like Japan for a senior executive it costs 82,500 for a single interview. So needless to say, we tend not to do personal interview surveys in Japan.

O I believe you may have said in your response that you can't do it by telephone?

A I'm sorry, no, I misspoke. You can't do it by person. You can do it by phone. It's very difficult -- It's too expensive to do -- I'm sorry, the answer -- It gets complicated. In the Orient when you want to do a survey if the person is of a very senior level they might be insulted if you said, I want to interview you by telephone. On the other hand, your client might not be willing to pay the price to interview them in person. So at the mid-level we do a lot of telephone surveys. At the mid-level it's common to do telephone surveys. But at the upper echelons it creates a certain amount of -- It sometimes creates a problem.

ARBITRATOR WERTHE/M. These \$2,500 interviews would typically take how long?

THE WITNESS. Fifteen minutes, a half hour.

ARBITRATOR WERTHEIM. We better get some

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arbitrations in Tokyo.

THE WITNESS: There's a ritual. You take them out to dinner. You bring them a gift. It's an elaborate ritual before you get an interview.

MR. GARRETT: In terms of dollars how much does the American industry invest each year in doing the survey research?

THE WITNESS: I've heard the figure several billion dollars. I don't know that anybody really knows. I suppose if we add up those firms that are publicly owned we could come out with an approximation there, but it's a vast sum of money.

BY MR. GARRETT:

As a general matter why do businesses conduct surveys, or more specifically what do they do with those kind of results, survey result?

A There are two reasons for doing surveys. One is to increase the probability of making the right decision; that is, the one that will be more profitable. And the second is to protect yourself in case things don't turn out right. So those are the principle reasons for doing market research.

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THE WITNESS: That is correct.

BY MR. GARRETT:

How did those findings relate to the accuracy of your predictions?

A Really totally independent. One has to do with the predicted validity and the other has to do with -- If we say somebody has a low probability of purchase -- Our research indicates that there's a low probability of their purchasing a brand, then there is a low probability of their purchasing that brand, and that same individual probably has a high probability of purchasing some other brands, so he falls into more than one category.

Q And so we're clear, what do you mean or what do you understand it meant by accuracy?

A Well, I would presume it means that people do what they say they're going to do.

Q And what did your research show on that score?

A That whether the score was low or high, the research showed that the constant sum scores are predictive of what -- more predictive than any other

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Now I want to ask you more specifically about the Bortz questionnaire.

CHAIRPERSON JIGANTI: I don't need one.

MR. GARRETT: You have a copy of this?

THE WITNESS: I believe so.

MR. GARRETT: I'd like to ask you to turn to page 45.

ARBITRATOR WERTHEIM: I'll give this back.

MR. GARRETT: I've got a couple more anyway.

Before I get into that, let me just clear up one other thing about your research, I think what Mr. Lane asked you about. And this is Joint Sports claim. It's Exhibit 13.12-X, the original Axelrod study.

I believe you indicated in your research in your testimony that high scores were correlated with a likelihood of a purchase, is that correct?

THE WITNESS: That is correct.

MR. GARRETT: And low scores were correlated with a low likelihood of purchase, is that correct?

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measure we know of regarding what people are going to do.

Q In other words, when using the constant sum scale that helps you predict what they actually did later on better than any other scale that you used, correct?

A Right.

O Now you had previously reviewed the court's testimony in this proceeding, correct?

A Yes.

Q And you previously reviewed the survey instrument that they used?

A Yes, indeed.

Q If I ask you to turn to the constant sum question, which is on 4a, on page 48, do you have that before you?

A Okay.

Now it is correct, is it not, that that question asked the respondent to value different types of distant signal programming that the respondent's cable system carried during the prior year, correct?

A Correct.

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1 Q And it asked them, that is the respondent,
2 to do so in the context of allocating a budget for
3 that program, correct?
4 A That is correct.
5 Q In your judgment is it appropriate to use
6 the constant sum question to determine the relative
7 values of different types of programming?
8 A Yes. I think it's ideally suited for that
9 purpose, since it forces people to focus on
10 relationships, rather than to look at each decision
11 independently.
12 Q Now if you look to the portion of the
13 question proceeding the categories --
14 A Yes.
15 Q -- it says what percentage, if any, of the
16 fixed dollar amount, would you spend on read first
17 program type, and what percentage, if any, would you
18 spend on read the next program type. Do you see that?
19 A No. You're on page 48, the first
20 paragraph?
21 Q Yes.
22 A Okay.

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2 A "I will read all the program types that
3 was broadcast by these stations to give you a chance
4 to think about them. Please write the categories down
5 as I am reading them."
6 Q And it goes on, and it ends up by saying,
7 what percentage, if any, of the fixed dollar amount
8 would you spend for each type of programming. Do you
9 see that?
10 A Yes.
11 • The respondent there is being asked at
12 that point in time how he or she would allocate a
13 program budget, correct?
14 A Right.
15 • And you talked earlier in your testimony
16 about events that might happen after you respond to
17 this question, do you recall that?
18 A Right.
19 Q And that might affect your actual
20 behavior, correct?
21 A Yes.
22 O There maybe intervening events that would

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1 affect the responses that you actually gave to the
2 question that you were asked, correct?
3 A Yes.
4 . I want to just focus now about whether at
5 the time that the question is asked we're getting a
6 good indication of the value that the respondent's
7 attached, the different types of programming.
8 A Yes, I believe that is exactly what we're
9 getting, We're asking what he would do and how does
10 he value these alternatives at that point in time, and
11 that is precisely what he's telling us. I think it's
12 the best possible prediction of what he would do.
13 Q And you testified earlier about
14 intervening events, I guess it is possible, since
15 anything is possible, that if they actually had to
16 purchase category by category the different types of
17 distant signal programs that they carried a year
18 ,4,43go -- they had to actually purchase that at some
19 point in the future, that intervening events might
20 come in and alter the responses that they gave in this
21 survey, correct?
22 A Would alter the responses or alter their

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1 behavior?
2 Q Let me strike that. That was not a very
3 clear question.
4 Let's do it this way. You also have the
5 testimony, the Bortz & Company testimony, that gives
6 the history of the surveys? Do you have that before
7 you?
8 A Yes, I have it right here.
9 Q I ask you to turn to Table 1 of that
10 Sorts, which is up in the front of the -- Let me get
11 before you the history and analysis of the CRT cable
12 operator surveys? Do you have that?
13 ARBITRATOR WERTHEIM: Do you have anything
14 to reference?
15 MR. GARRETT: Yes, JSC, Exhibit 3.
16 CHAIRPERSON JIGANTI: Mr. Garrett, I'm
17 concerned about recess time. We've been going about
18 an hour. What is your scheduling here?
19 MR. GARRETT: I believe that I can finish
20 within about ten minutes, Your Honor. If you would
21 like to take a break now it would be fine. It's up to
22 you.

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CHAIRPERSON JIGANTI: I'm concerned about the witness.

THE WITNESS: I think the next flight is not to 4:00 or 5:00, whatever. So, it doesn't represent a problem.

CHAIRPERSON JIGANTI: The question is do we break for lunch now, or do you want to proceed with the witness after lunch.

MR. GARRETT: It's entirely at the panel's discretion, Your Honor.

CHAIRPERSON JIGANTI: Well then let's break for lunch.

MR. GARRETT: Dr. Axelrod has heard so much about the cafeteria.

CHAIRPERSON JIGANTI: Just one moment before we do. Ms. Woods, there was an indication, 2:00 for your client.

MS. WOODS: Well we expect our witness, Dr. Sheffner, at 2:00. And I also expect Mr. Hester.

CHAIRPERSON JIGANTI: Okay.

(Whereupon, the proceedings went off the record at 12:47 p.m. for a Lunch break.)

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that you want to use in your survey. Is that correct?

A Yes.

Q And is it fair to say that in doing that type of research you will consult with experts in the industry that you're studying?

A Yes. And sometimes the expert is the consumer.

• But it is important doing surveys of this nature here to have someone who is knowledgeable about the industry itself to help you in formulating the language of the questionnaire; correct?

A Yes.

• And if you were going to design a survey about cable operators, you would, would you not, go to someone who is knowledgeable about the cable television industry in order to help you formulate the questions in that survey; correct?

A Yes.

Q You also were asked a number of questions about the significance of giving a zero to one of the categories in the Bortz questionnaire; correct?

A Yea.

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(1:56 p.m.)

CHAIRPERSON JIGANTI: Mr. Garrett, you may proceed.

BY MR. GARRETT:

Q Dr. Axelrod, you were asked some questions this morning about the different program categories in the Bortz survey.

A Yes.

Q Do you recall?

A Uh-huh.

Q And you were asked, in particular, whether or not those categories provide realistic alternatives for cable operators; correct?

A Yea.

Q Now, in your survey research work, you are often called upon to design different types of categories for constant sum questions; correct?

A Correct.

Q And when you do so, I assume you go out and figure out what's going on in the industry, how people in the industry understand the different terms

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• And as a general proposition, is it true that if someone gives a zero allocation to a category in a constant sum survey, that might mean that the person who responded did not understand what that category is?

A As a general observation?

Q Yes, as a general matter.

A If it -- well, if it's in a category about which they should be knowledgeable, then I would interpret it to mean that they just don't want to buy that, they don't want to invest in it. If it's a category in which they are not knowledgeable, it might indicate that -- have a different interpretation.

Q You are aware, are you not, there have been a number of zeros assigned to different categories of programming by the respondents to the Bortz survey?

A Yes.

Q How likely is it in your estimation that those who were assigned zeros simply did not understand what that category was?

A Virtually, I would say, no possibility

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1 that they didn't understand.

2 Q Why would you say that?

3 A Well, these are people who are running a

4 cable system to say that: a) they could run a cable

5 system; and b) have no understanding of a particular

6 category as incongruous.

7 Q All right. I started to put up on the

8 chart here the results of the Bortz surveys over the

9 years. Can I ask you, if you would, to turn to Table

10 1 of JSC Exhibit 3 in this proceeding?

11 A Yes.

12 Q That's the history and analysis of the CRT

13 cable operator surveys 1978 to 1993.

14 A Table 3 you said?

15 Q Table 1.

16 A Table 1.

17 Q This is on Page VI.

18 A Oh, okay. Table 1, VI. Ah. Here we go.

19 Q Okay. Do you have that, Table 1, before

20 you now?

21 A Right.

22 Q According to Table 1, in the 1992 survey

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A Yes.

O And then in 1979 there were two surveys

3 done by BB1760; correct?

4 A Yes.

O And in one sports was at, 833.98; correct?

6 A Yea.

7 Q And the other was \$35; correct?

8 A Correct.

9 Q In 1978 \$27 was the sports allocation;

10 correct?

11 A Yes.

12 • Let me just compare that with the

13 syndicated program category. I'll do these quickly:

14 in 1992 15.6; in 1991 14.3; in 1990 16.9; in 1989

15 17.5; in 1986 18.6, in the BBC '83 survey; and 15.84

16 in the ELRA '83 survey; 11.76 in the 1980 BBD&O; 10.62

17 in the 1979 Managers; and 10.57 in the 1979 MSO; and

18 5 in the 1978 BBD&O; correct?

19 A Yea.

20 Q Now, let's focus on the responses to these

21 two categories for a moment, Dr. Axelrod. It has been

22 suggested in these proceedings here that the

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the respondents allocated the sports category 38.8

2 percent. Do you see that?

3 A Uh-huh.

4 Q And '91 survey was 36.3 percent. Is that

correct?

6 A Yes.

7 • You might want to --

8 A Verify those. Right.

9 Q And 1990 was 37.1 percent?

10 A Yes.

11 Q And 1989 34.2 percent?

12 A Correct.

13 Q And in 1986 it was 38.5 percent?

14 A Correct.

15 Q And in 1983 the survey done by Bortz for

16 BBC was 36.1 percent?

17 A Uh-huh, yes.

18 Q And in that same year, the survey done by

19 ELBA was \$35.66 for sports; correct?

20 A Right.

21 Q And in the 1980 survey, sports category

22 had \$32.95; correct?

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1 respondents were simply giving the answers to

2 questions just kind of off the top of their head, that

3 they simply wanted to get the interviewer off their

4 back so they could go on to their regular business.

5 You've heard those arguments and that?

6 A Right.

7 Q And you've heard arguments like that

8 addressed about other types of research; correct?

9 A Yes.

10 Q Do you agree with these criticisms that

11 responses such as these focusing just on the sports

12 and syndicated programming categories really are

13 nothing more than answers to questions that have no

14 meaning for these respondents?

15 A No. I disagree sharply. The consistency

16 of the answers is remarkably high.

17 Q What significance is the consistency of

18 these answers?

19 A Well, if it was random, it certainly would

20 not be -- randomness implies that the answer in one

21 year has no correlation to the answer the next year.

22 Q Is it fair to conclude that the

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respondents to these surveys mean what they say when they consistently give sports in the neighborhood of about 35 percent?

A I believe so.

Q Is it fair to conclude that the respondents mean what they say when they consistently give syndicated series the numbers that they've given in the surveys over the years?

A Yes, I believe so.

Q Are these results consistent with the notion that the respondents simply wanted the interviewer to get off his or her back and leave him alone?

A Hardly.

Q In your judgment, Dr. Axelrod, can the Panel accept these answers as providing a reliable estimate of how cable operators, in fact, value sports and syndicated programming?

A I believe they can and should.

Q And why do you feel that way?

A Well, we're seeing a very consistent pattern of results. I mean, there's no -- I don't see

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something that you had said earlier. We were talking about how individuals -- when they respond to questions, their responses might be very different than their subsequent behavior; correct?

A Yes.

Does that criticism have applicability in the context of this survey here?

A Does the criticism that their behavior -- well, clarify the question.

Q Let me try to be more specific, then. The Bortz survey in each of these years asks the cable operators how at a given point in time they valued programming that they had carried during the year; correct?

A Right, correct.

Q And I gather from what you were saying earlier that if those respondents actually had to go out and buy the different categories of programming at some future date, that their behavior might be different from the responses that they gave?

A It might in individual instances. In the aggregate, I would think that the behavior would very

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any randomness in this display of figures.

Q Let me ask you now to go beyond just the sports and the syndicated programming numbers and direct your attention to Table 1. Do you have that before you?

A Yes.

Q And let me ask you to look at the responses that are given to all of the different categories, not just sports and syndicated series.

A Uh-huh.

Q Okay. Now, can the Panel accept the responses for all of those categories as providing reliable estimates of how cable operators, in fact, value those different categories?

A I believe so.

Q And, again, why do you feel that way?

A Well, as I say, we're seeing a greater degree of consistency with not a huge sampling. Two hundred respondents is not a vast number of people. And to see this kind of reliably with a small sample is, I think -- suggests that the answers are reliable.

• Let me go back again. I'm confused about

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closely mirror what they have reported here.

Q Well, why don't we focus on the aggregate, SS opposed to -- I mean, isn't it true -- if individuals are going to do something different than what they say, how does it help to look at the whole aggregate?

A Because there are error factors, and there are constants. And the errors are assumed to be random. The constants are assumed to be regular. And, therefore, overall the pattern shows up.

So the -- any given -- we do not predict and certainly in market research or psychology in general unless you're doing psychotherapy, we are not engaged in trying to predict the behavior of a particular individual. That's beyond the state of the art.

We are trying to predict the behavior of the group. And that we can do with a specified degree of accuracy. We can say that plus or minus X percent this is what -- if we had interviewed every operator, here's what we would have obtained.

Q How comfortable do you feel that this

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Panel can be in relying upon the results that are shown in your Table 1, for example?

A Well, if you took one to the -- what is it? -- the ninth power, the odds of getting that kind of result, that consistent result nine times in a row are phenomenally small. So I would suggest that the Panel can be very confident that if they continued to do these -- this kind of research, that they would get these kinds of answers.

Q Dr. Axelrod, you have written a number of articles on survey research, have you not?

A Yes.

Q Over the years?

A Correct.

Q And it's fair to say that you have been critical of some types of survey research?

A Correct.

And it's fair to say that you've concluded that some types of survey research can be done very badly? '

A Yea.

Q And you also concluded that survey

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And that's true of the industry as a whole?

A Absolutely. These people are not, as I say, trying to spend money frivolously. Unfortunately, they're not trying to keep us living in mink coats and caviar and the like.

Q As you know, Bortz has used the constant sum technique here, and others before Bortz have also used the constant sum technique.

A Uh-huh.

Q Is it your opinion that the use of the constant sum technique in order to determine the relative values that cable operators attach to different types of programming is appropriate?

A Yes.

Do you think it's appropriate for the Panel to rely upon the results of the surveys that are presented, the constant sum surveys?

A Yes.

It's not always appropriate to rely upon a constant sum survey, is it?

A Definitely not.

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research can be misinterpreted?

A Yes.

Q Nielsen research, for example, can be misinterpreted by its clients?

A Yes.

Q It would be fair to say you're certainly not an advocate across the board for all types of survey research?

A No, definitely not.

Q But you have used the constant sum survey?

A Yes.

Q And you've used it for a number of clients over a number of years?

A Yes, indeed.

Q And these clients have relied upon your survey research and the constant sum method, in particular?

A Yes, they have.

Q And they've relied upon it in order to make important business decisions that involve substantial amounts of money?

A Yes.

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Q But the results here are ones that you feel comfortable in urging the Panel to rely upon?

A Very much so.

MR. GARRETT: I have no further questions.

CHAIRPERSON JIGANTI: Thank you.

Recroas, Ms. Woods?

MS. WOODS: No.

CHAIRPERSON JIGANTI: No one after that?

Mr. Cosentino? Mr. Lane?

MR. LANE: No, Your Honor.

CHAIRPERSON JIGANTI: No other questions?

Ms. Hand? Ma. Austin? Okay.

ARBITRATOR WERTHEIM: I have.

THE WITNESS: Yes, sir.

ARBITRATOR WERTHEIM: Before I get to my question, I just want to observe how glad I am that we don't allow leading questions here.

Dr. Axelrod, you thought that the question asked in the Bortz survey relating to what percentage of your fixed programming money you spend on these various categories was -- I think you even used the word "ideal" -- question for this purpose. But, in

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any event, you approved of it?

THE WITNESS: Yes. I thought it was an appropriate use.

ARBITRATOR WERTHEIM: Now, we had another witness who suggested that in economic terms the more precise question should be -- I'm not quoting this exactly, but it's to the effect that in order to achieve the programming mix that you did achieve in the years 1990, '91, '92, what would you have been willing to spend in each of the program categories?

Now, the witness who made that suggestion went on to say that he thought that, nevertheless, the question shouldn't be put that way because that was too economically sophisticated a way of putting it given the character of a lot of respondents in these surveys.

Without asking you whether you think that's the right question or not because I understand you're not the. Congress, --

THE WITNESS: Right.

ARBITRATOR WERTHEIM: -- assume that that was the right question.

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THE WITNESS: Would you spend to achieve -- well, I think you would have -- you probably would have to amplify the question because, I mean, how am I going -- I mean, the follow-up is not an answer, but a question. How would what I spend influence that?

I mean, you know, if you say to me, if you change your expenditure, you can affect what -- the pattern of what you're going to expose, I would -- it seems to me I would want to know how it affects what I'm going to -- how it's going to affect the programming.

So it's not that you have to be an economist. You have to understand the nature of the relationship between what you do and what happens.

ARBITRATOR WERTHEIM: So do you think phrased in that manner the question would have too much ambiguity or complexity to elicit answers pretty consistent among different --

THE WITNESS: I think it would require amplification to get a consistent answer because the connection between what you spend and what happens isn't obvious.

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THE WITNESS: Okay.

ARBITRATOR WERTHEIM: Do you think that such a question would have required a level of economic sophistication that would have made the cable operator responses unhelpful?

THE WITNESS: It doesn't strike me that you have to be an economist to say -- I mean, if you're asked by somebody "How much of your money would you be willing to put on the table right now?; I mean, however the word -- whatever the wording is, it's a -- it doesn't require an economic -- what do they call it? -- who's involved in measurements, economic measurements. It doesn't require a great deal of sophistication. This is definitely of a microeconomics that we as consumers and as businessmen make all the time.

ARBITRATOR WERTHEIM: The suggestion was that the question be put in terms of what would you have spent or what would you spend in order to achieve the particular programming mix that you actually did achieve for the year in question. Does that affect your response at all?

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ARBITRATOR WERTHEIM: Thank you. That's all I have.

CHAIRPERSON JIGANTI: Okay. Further questions?

(No response.)

CHAIRPERSON JIGANTI: Thank you, Dr. Axelrod.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

CHAIRPERSON JIGANTI: Before we take a short recess before we get to the next witness, Mr. Lane?

MR. LANE: Yes. I'd like to move Program Suppliers Exhibit 21-R-X.

CHAIRPERSON JIGANTI: Any objections?

(No response.)

CHAIRPERSON JIGANTI: It will be admitted.

(Whereupon, the aforementioned document, having previously been marked for identification as Program Suppliers Exhibit Number 21-R-X, was received in

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American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

MPAA-represented Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

Public Broadcasting Service (PBS), represented by Lindsey L. Tonsager served via Electronic Service at ltonsager@cov.com

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